IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

W.A.No.1707 of 2001

1.P.Sundaramurthy
2.V.Sekar
3.G.Hemanathan

Heriditary Trustees of the Arulmugu Prasanna Vinayagar Koil, Choolai High Road, Chennai 600 112.

... Petitioners/
Appellants.

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road,
Chennai 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road,
Chennai 600 034.

3.The Executive Officer
Arulmigu Gangadheeswarar Thirukoil,
Purasawalkam, Chennai 600 007. ...Respondents./
Respondents.

W.A. filed against the order dated 6.7.2001 made in W.P.No.827 of 2001 on the file of this Court.

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For appellant : Mr.M.Venkatachalapathi, Sr.counsel for
M/s.M.Sriram, D.Rajendran & D.Balaraman

For respondents: Mr.G.Sugumaran, Spl.GP. For HR & CE.

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JUDGMENT
(Delivered by P.SATHASIVAM,J.)

The writ appeal is directed against the order of the learned Single Judge dated 6.7.2001 made in W.P.No.827 of 2001 on the file of this Court, in and by which the learned Judge permitted the petitioners to make an application under section 54(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"), and if any such application/petition is made, directed the appropriate authority to dispose of the same in accordance with law and on merits.

2. Heard learned senior counsel appearing for the appellants and learned Special Government Pleader for the respondents.

3. In the light of the order to be passed hereunder, we are of the view that it is not necessary to refer all the factual details as narrated by both the parties. It is the case of the petitioners/appellants that they are the legal heirs of the original hereditary trustee, by name, Vaithialinga Odayan, their great grandfather. In the proceedings dated 25.11.2000, the Joint Commissioner, Hindu Religious and Charitable Endowments (HR & CE), after finding that out of five trustees, three persons, namely, (i) Gnanasundara Thambiran, (ii) Palani Thambiran and (iii) Rajarathina Thambiran are dead, removed other two trustees; Ayyavoo and Vinayagam Thambiaran from hereditary trusteeship. While passing the said order, the Joint Commissioner, HR & CE. has also appointed the Thakkar of the said temple as Fit Person to maintain the administration of the temple. It is the grievance of the petitioners/appellants that inasmuch as they are the legal heirs of the hereditary trustees, the Joint Commissioner, HR & CE, ought not to have appointed a Fit Person and on the other hand, he ought to have recognised and appointed them as hereditary trustees of the temple in question.

4. Learned Single Judge, in the light of section 54 of the Act and the procedure to be followed while filling up the vacancy in the Office of hereditary trustee, permitted the petitioners/appellants to make an application under section 54 of the Act with a direction to the Joint Commissioner, HR & CE to consider the same. By giving liberty to the petitioners to approach the Joint Commissioner, HR & CE for appointing them as hereditary trustees of the temple, the learned Judge dismissed the writ petition.

5. We verified the relevant provision, namely, section 54 of the Act. We have already referred to the fact that except Ayyavoo and Vinayagam who were removed from the trusteeship, others are dead. In such circumstances, as rightly observed by the learned Judge that as the petitioners claim that they are the legal heirs of the then hereditary trustees, it is for them to file an application giving all the required details. The Explanation to sub section (3) of section 54 of the Act

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makes it clear that it is for the Joint Commissioner, HR & CE or the Deputy Commissioner to consider the claim of the members of the family regarding succession to the office of hereditary trustee. In the light of the statutory provision, we are of the view that the conclusion arrived at by the learned Judge cannot be faulted with. However, according to the learned senior counsel for the appellant, inasmuch as the petitioners were continuing in the office of hereditary trustee, there is no need to appoint a Fit Person for the administration of the temple. In support of his claim, learned senior counsel brought to our notice the order of this Court made in W.P.No.5742 of 1991 dated 9.8.1999. In the said order, the learned Judge, while directing the Deputy Commissioner, HR & CE., Chennai to complete the enquiry proceedings, in view of the interim order passed in W.M.P.No.8800 of 1991, permitted the petitioners to continue the administration of the temple till a final decision is taken.

6. It is also brought to our notice that during the pendency of the present writ petition as well as the writ appeal, the petitioners secured an order of stay of the proceedings of Joint Commissioner, HR & CE, dated 25.11.2000 and by virtue of the said order, the petitioners herein are administering the temple.

7. In the light of what is stated above, we agree with the conclusion arrived at by the learned Judge, and the petitioners/ appellants are permitted to make an application under section 54 of the Act highlighting their claim. They are granted four weeks time from the date of receipt of a copy of this order to make application and if such application is made, the second respondent/Joint commissioner, HR & CE., Chennai is directed to consider the claim of the petitioners as well as other eligible members of the family, if any, who are entitled to succeed to the office of hereditary trustee by succession and pass orders within a period of three months thereafter. Till such final orders being passed, in view of the earlier direction of this Court made in W.P.No.5742 of 1991 dated 9.8.1999 as well as interim orders made during the pendency of the writ petition as well as writ appeal, the petitioners/appellants are permitted to continue the administration of the temple. It is made clear that if there is any complaint against the petitioners in the administration of temple, the Joint Commissioner, HR & CE is free to take appropriate action against them.

The writ appeal is disposed of accordingly. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Commissioner,
  Hindu Religious and Charitable Endowments,
  Nungambakkam High Road,
  Chennai 600 034.

2.The Joint Commissioner,
  Hindu Religious and Charitable Endowments,
  Nungambakkam High Road,
  Chennai 600 034.

3.The Executive Officer
  Arulmigu Gangadheeswarar Thirukoil,
  Purasawalkam, Chennai 600 007.

+ 1 CC to Mr. M.Sriram, Advocate SR NO 14727

+ 1 CC to the Government Pleader SR NO 14740

W.A.No 1707 of 2001

vs(co)
gp31.3.

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